

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 139 of 2004(N)

PETITIONER:

**KUMARI LILLIAMMA, AGED 59 YEARS,
D/O. CLARA LOPEZ-12, DOOR NO.06-112,
BISHAN STREET, SINGAPORE.**

**BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.**

RESPONDENTS:

- 1. A. PHILIP, S/O. ALPHONES,
T.C.44/94, VALIYARATURA, THIRUVANANTHAPURAM,
NOW TRESPASSED AND RESIDING AT G. BHAVAN,
T.C.35/436, CHEELANTHIMUKKU,
VALLAKKADAVU, THIRUVANANTHAPURAM.**
- 2. C.D. ATHINATIUS, S/O. XAVIER,
CURE D.CRUZ, BIK III, BISHAN STREET-12,
DOOR NO.03-158, SINGAPORE-570 111.**

BY ADV. SRI.GEORGE MATHEW

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.139/2004 N

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF JUDGMENT DTD. 29/10/1994 OF THE 1ST ADDL.SUB COURT, THIRUVANANTHAPURAM INO.S.NO.863 OF 1992.**
- EXT.P2: COPY OF I.A.NO.9925 OF 1995 IN O.S.NO.863 OF 1992.**
- EXT.P3: COPY OF I.A.NO.2976 OF 1999 IN O.S.NO.863OF 1992.**
- EXT.P4: COPY OF I.A.NO.2977 OF 1999 IN O.S.NO.863 OF 1992.**
- EXT.P5: COPY OF ORDER DTD. 11/10/2002 IN I.A.NO.2977 OF 1999 IN O.S.NO.863 OF 1992.**
- EXT.P6: COPY OF ORDER DTD. 19/09/2003 IN I.A.NO.2976 OF 1999 IN O.S.NO.863 OF 1992.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 139 of 2004

Dated this the 9th day of July , 2007

JUDGMENT

The 2nd defendant in a suit for money impugns in this writ petition under Article 227 of the Constitution Ext.P6 order dismissing her application seeking review of an earlier order under which the learned Subordinate Judge dismissed her application to set aside ex-parte decree for default. The suit was decreed ex-parte on 29.10.1994 and Ext.P1 is a copy of the judgment. According to the petitioner, the suit was based on a promissory note which had not been executed by her at all. On 20.4.1992, the alleged date of execution of the promissory note, she had been at Singapore to the knowledge of the first respondent plaintiff. Nevertheless, the address shown in the plaint was her address in Thiruvananthapuram and she was served with summons by publication in a Trivandrum daily by name 'Chithiradesam'. She filed Ext.P2 application under Order

9 Rule 13 of the CP.C. on coming to know about the passage of the ex-parte decree. Ext.P2 application was posted on 25.2.1997 for the purpose of evidence. In fact she landed in India on 25.2.1997 for the purpose of giving an evidence in support of Ext.P2. But on that date, there was Kerala Bundh on account of which enquiry of Ext.P2 order was adjourned by the court to 1.4.1997 and she therefore returned to Singapore. She fell seriously ill at Singapore and she came to know about the dismissal of Ext.P2 principally on the ground of default only on 5.6.1997. It was thereupon that she filed Ext.P3 application seeking review of the order dismissing Exts.P2 and Ext.P4 application seeking condonation of delay caused in the matter of filing Ext.P3. In Exts.P3 and P4 identical reasons were enumerated by the petitioner. The court below allowed Ext.P4 application for condonation of delay but dismissed Ext.P3 application for review. Ext.P5 is the order in the application for condonation of delay and Ext.P6 is the order on the application for reviewing the order dismissing the application to set aside ex-parte decree.

2. very strenuous arguments were addressed before

me by Sri.V.Manu, the learned counsel for the petitioner and also by Sri.George Mathew who was served with a copy of the writ petition as directed by me. I find merits in the submission of Sri.Manu that there is a justifiable cause for the petitioner's absence on the day when the suit was decreed ex-parte. At the relevant time she was in Singapore and service of summon effected on her by publication in Chithiradesam daily, a daily of limited circulation was not sufficient. It was substantially on the same grounds that Exts.P3 and P4 were filed by the petitioner. Having allowed Ext.P4 by passing Ext.P5, the learned Subordinate Judge could have allowed Ext.P3 also after imposing adequate terms on the petitioner so that the interest of the plaintiff also could be safe guarded.

3. The result of the above discussion is that setting aside the impugned order Ext.P2, the IA filed by the petitioner against the order will stand allowed subject to the following conditions:

1. The petitioner remits cash Rs.25,000/- the roughly estimated cost of the suit before the court below within two months of her receiving a copy of this judgment.

The petitioner pays to the 1st respondent-plaintiff either

directly or through her counsel in this court, a sum of Rs.1,500/- and pays a further amount of Rs.1,000/- by way of cost to the High Court Legal Services Committee within three months of receiving a copy of this judgment. The petitioner furnishes immovable security to the satisfaction of the trial court for a sum of Rs.1 Lakh within four months of receiving copy of this judgment. Once it is seen that all the above conditions have been complied with, the court below will permit the petitioner to file a written statement and will formulate issues on the basis of the conditions raised therein and dispose of the suit afresh as against the petitioner. It is made clear that against the 2nd respondent-husband the ex parte decree has not been set aside and the same stands confirmed.

**PIUS C. KURIAKOSE,
JUDGE.**

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